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Legal Injustices: *The Zina Hudood Ordinance* of Pakistan and Its Implications for Women

By Rahat Imran¹

Abstract

During recent decades the women of Pakistan have been the most vulnerable and convenient targets of social, domestic and sexual violence. This paper will examine the trend of sexual violence against women that emerged in Pakistan with the introduction of the Islamization process through the implementation of the Sharia laws since 1979. The paper's main focus will be on rape and the state legislation that governs it, namely the Zina Hudood Ordinance of 1979 and the Law of Evidence of 1984, and how the gender-discriminatory nature of these laws serves as a powerful weapon in the hands of the patriarchal society of Pakistan to subjugate women. These laws and their rigid interpretation in the name of Islam have not only facilitated oppression and sexual violence against women to an alarming degree in Pakistan, but also seriously eroded women's chances of equal justice. The factors that led to the implementation and survival of such laws in the first place, and consequently how rape became a daunting weapon against women, will be discussed. The paper will analyze the various political, social, cultural and religious factors that contribute to this situation, and the legal and social complexities involved for women in seeking justice in rape cases. In conclusion, the paper will discuss Pakistani women's initiative in evolving and building an organized resistance and struggle for the repeal of gender discriminatory laws.

Keywords: Zina Hudood Ordinance, Islamization, Pakistani women

Introduction

This paper will place Pakistan in an historical perspective in order to introduce the process of Islamization under the dictatorship of General Zia-ul Haq (1977-88), and show how and why Islam was used as a political tool to introduce gender-discriminatory laws which have seriously undermined women's rights even further in an already orthodox and patriarchal society.

The paper will examine the Zina Hudood Ordinance² and the Law of Evidence³ and their archaic and rigid Sharia⁴ perspectives that govern sexual behavior and morality under Pakistani law, and how the loopholes within these laws can, and have, specifically encouraged violence and legal injustices against women. I will analyze the difficulties and complexities for female rape victims in obtaining justice in Pakistan through the use

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² The *Hudood* Ordinance criminalizes *Zina*, which is defined as extra-marital sex, including adultery and fornication. It makes no distinction between consensual sex and rape.

³ The *Law of Evidence* states that the testimony of a female is considered half that of a man's in a Pakistani court of law.

⁴ Islamic socio-religious laws, based upon the literal interpretation of the *Quran*, dating back more than 1400 years, and believed by Muslims to be the divine word of God.

of a specific case study.⁵ I will discuss how patriarchy and vested political motives in Pakistan joined hands and used religion as a tool to strengthen and support each other. It is also significant to note the regional and religious factors that were shaping the destinies of neighboring Iran and Afghanistan around the same period, and how the highly politicized Islam in all three countries strengthened and supported each other in the name of religion, and undermined and eroded women's rights as the first step towards Islamization.

The paper will discuss Pakistani feminists' and women's growing resistance to gender discrimination and rigid religious laws since 1979, and their struggle to have gender-discriminatory laws repealed. This will include a discussion of the various resistance strategies developed by feminists and women's rights organizations in Pakistan for the empowerment of women.

Pakistan in Historical Perspective

Pakistan gained independence in 1947 after the British colonial rule ended in India. After independence, the British colonial legislation of Muslim family laws, like "The Child Marriage Restraint Act 1929", "The Muslim Personal Law 1937" and "the Dissolution of Muslim Marriages Act 1939", continued to govern the new state. However, in 1955 a seven-member Commission on Marriage and Family Laws was constituted to decide areas needing reform.⁶ The commission submitted its report in 1956 suggesting major reforms, which generated heated debates and harsh criticism from the religious parties who rejected it completely, calling it anti-Islam. However, after the 1958 Martial Law, General Ayub Khan, a liberal man, introduced the Muslim Family Laws in 1961 by incorporating some of the reforms recommended by the commission.⁷

Since its birth, Pakistan has continued to experience many political upheavals, including prolonged authoritarian regimes in the guise of democracy. Despite the authoritarian environment of the country, women managed to carve their place in the polity. However, the 1977 martial law regime of General Zia-ul-Haq, that lasted for eleven years after usurping power from the first democratically elected Prime Minister Z.A. Bhutto, introduced the concept of Islamization in Pakistan. Thus, a process was begun which would increase the legal discriminations against women through the introduction of the Federal Shariat Courts⁸ and the promulgation of the Zina Hudood Ordinance and the new Law of Evidence.⁹ It is significant to note the timing of events around this period regionally, and how the political developments in Pakistan led to the Islamization of neighboring Afghanistan. Zia's martial law regime and Ayatollah Khomeini's Islamic revolution in Iran paved the way for a backward journey for the

⁵ The *Safia Bibi* case, 1983, Pakistan.

⁶ Ibid.

⁷ Ibid.

⁸ The *Federal Shariat Courts* were established in 1980, and all their judges are Muslims, even though non-Muslims are also tried in these courts under Islamic laws. These courts have the exclusive jurisdiction to hear appeals against all convictions passed under the *Hudood Ordinances*. For details see Jahangir, Asma and Jilani, Hina. *The Hudood Ordinances: A Divine Sanction?* Sang-e-Meel Publications, Lahore, Pakistan, 2003. p-1-3.

⁹ Ibid. The *Law of Evidence* (The *Qanun-e-Shahadat*) draft was introduced into the Parliament, known as the *Majlis-e-Shoora* (The Council of Islamic Ideology) under Zia-ul-haq, in 1983, and passed in 1984. Its members were nominated by Zia, and not elected. For details see p-30-31.

women of Pakistan, Iran and Afghanistan, and turned them into the first targets of oppression and social and religious discrimination. Together, the Islamic Revolution in neighboring Iran, the execution by hanging of Z A Bhutto by the US backed military regime of Zia in Pakistan, the Soviet invasion of Afghanistan and the introduction of the Hudood Ordinance by the military regime were the four major events in 1979 that collectively had a profound impact on Pakistani society.¹⁰ These events not only hugely altered the socio-cultural ethos of the Pakistani society but also drew attention of educated Pakistani women at home and abroad to start investigating specific related feminist issues. Mumtaz Khawar and Fareeda Shaheed, feminist activists and co-founders of the Women's Action Forum, a pioneering women's rights organization in Pakistan formed in reaction to Zia's introduction of the Hudood laws in 1979, note:

On the 22 February 1979 (the Prophets birthday), amidst much fanfare and media build-up, the first concrete step towards Islamization was announced by the military government. This took the shape of the Hudood Ordinance 1979, which covers theft, drunkenness, adultery, rape and bearing false witness. The Ordinance makes Zina an offence against the state, unlike the British law hitherto in force, which considered adultery a matter of personal offence against the husband.¹¹

The process of Islamization strengthened patriarchal beliefs and practices in Pakistan through its extreme fundamentalist approach to religion. Despite the fact that Article 25 of the 1973 Constitution of Pakistan, which deals with the fundamental rights of Pakistani citizens, states clearly that nothing "shall prevent the State from making any special provision for the protection of women..."¹², and Pakistan's ratification of the CEDAW convention (the UN Convention on the Elimination of all Forms of Discrimination Against Women) in 1996,¹³ hardly a day goes by when an incident of horrific violence or discrimination against a woman is not reported in the media in Pakistan, and yet the majority of the incidents go unreported altogether.¹⁴

Theological Background to Islamic *Sharia* Laws: Basis, Sources and Interpretations

The *Sharia* laws in Islam are based on the interpretation of rules of guidance as contained in the *Quran*, the holy text of the Muslims that is also considered as the 'divine' word as revealed by God through angel Gabriel to Prophet Mohammed, and the *Sunnah*¹⁵ considered to be based on the life of the Prophet himself. The *Sunnah* also

¹⁰ Zafar, Fareeha: "A Feminist Activist in Pakistan". Women's Studies, Women's Lives:- Theory and Practice in Asia. Kali for Women Publications, New Delhi, India, 1994. p-79.

¹¹ Mumtaz, Khawar and Shaheed, Fareeda: Women of Pakistan: Two Steps Forward, One Step Back? Vanguard Books. Lahore, Pakistan, 1987, p-100.

¹² Cowasjee, Ardeshir: "Injustice to Women" *The Daily Dawn*, Karachi, Pakistan, February 15, 2004. Accessed at www.dawn.com on 15 February 2004.

¹³ For details see Zia, Shahla and Bari, Farzana: "Women in Non-Government Organizations": Baseline Report on Women's Participation in Political and Public Life in Pakistan. Project of International Women's Rights Action Watch-Asia Pacific. Published by *Aurat* Publications and Information Service Foundation, Islamabad, Pakistan, 1999. p 11.

¹⁴ For details see "Crime or Custom? Violence Against Women in Pakistan". Human Rights Watch World Report, USA, August, 1999. Accessed at www.hrw.org/reports/1999/pakistan/ on May 12, 2004.

¹⁵ The Islamic teachings based on Prophet Mohammad's life)
For detailed definition and functions of *Sharia* see "*The Shari'a*" By H.A.R.Gibb. Accessed at: <http://answering-islam.org/Books/Gibb/sharia.htm> on April 9, 2005.

contains the *Ahadith*¹⁶ which are the sayings of the Prophet, or the *Traditions* in Islam. Although there are several schools of thought and variations regarding the interpretation and authenticity of the various *Ahadiths* and the *Sunnah*, depending on which Islamic sect one belongs to or studies, there is consensus among all Muslims regarding the 'divine' nature of the *Quranic* text itself. Therefore, the laws derived and based on the interpretation of the *Quran* by the *ulema* (religious scholars) are considered 'Divine' laws as those prescribed by God, i.e. *Sharia*, for Muslims. Noted Islamic scholar, Abul A'la. Mawdudi, who is considered one of the supreme theological authorities in the Muslim world explains:

The Shariah....prescribes directives for the regulation of our individual as well as collective life. These directives touch such varied subjects as religious rituals, personal character, morals, habits, family relationships, social and economic affairs, administration, rights and duties of citizens, judicial system, laws of war and peace and international relations. In short, it embraces all the various departments of life and an all-embracing social order where nothing is superfluous, and nothing is lacking.¹⁷

However, it is important to remember the various factors involved in the interpretation of the *Quranic* texts, such as the various opinions and disciplines that have shaped the practice of Islam today:

Traditionalists versus rationalists; scholars who chose only a handful of *ahadith* as religiously binding, versus those who considered nearly all *ahadith* as so; those who interpreted the *Quran* with literalism and those who saw its broad fundamentals as eternal; those who believed in imitating the practice of Islam during the Prophet's lifetime versus those whose application of Islam took into consideration the different social and political climates; those who claimed the "doors" of *ijtihad* (independent judgment) were to be closed, and those who believed they should remain open to prevent stagnation of thought.¹⁸

In light of the above, distinct Islamic schools of thought regarding Islamic jurisprudence grew out of the framework of Islam, differentiated by the particular political, cultural and social milieu that affected their formation and practice:

¹⁶ *Ahadith* (plural of *Hadith*) are the collection of the instructions issued by Prophet Mohammed, and preserved by his disciples and those who were given an account by eye-witnesses. For detailed discussion see Mawdudi, Abul A'la. "Faith and Divine Law". Towards Understanding Islam. Al Attique Publishers Inc. Canada, 1993. p-127.

For a critical discussion on the historical significance of *Ahadith* and the *Quranic* text see Barlas, Asma. "Texts and Textualities: The *Qur'an*, *Tafsir*, and *Ahadith*". "Believing Women" in *Islam: Unreading Patriarchal Interpretations of the Qur'an*. University of Texas Press, Austin, USA, 2002. p-31.

¹⁷ Mawdudi, Abul A'la. The Islamic Law and Constitution. Islamic Publications Ltd. Lahore, Pakistan, 1980. p-52.

¹⁸ For a detailed discussion on the various sources of Islamic law see "Intellectual Background: Islamic Sources of Information and the Development into Islamic Law. Accessed at: www.mwlnusa.org on June 6, 2005. p-1.

In the eighth century, a difference in legal approach arose amongst Islamic thinkers in two prevailing schools of legal thought. The traditionalists (*ahl al-hadith*) relied solely on the *Quran* and the *sunna* (traditions) of the Prophet as the only valid sources for jurisprudence, such as the prevailing thought emanating from Medina. The non-traditional approach (*ahl al-ra'y*) relied on the free use of reasoning and opinion in the absence of reliable *ahadith*, which was heralded in Iraq. The reason for the difference in technique is that in Medina, there was an abundance of reliable *ahadith* that scholars could depend on for forming legislation, since the Prophet lived the last ten years of his life during a period of legislation in the young Muslim community. In Iraq, the sources that were available were not as reliable as in Medina and so the jurists had to turn to analogy because of their circumstances. Therefore, a *hadith* may have been accepted by *Malik* (from Medina) and not by *Abu Hanifa* (from Iraq) who had to use analogy in the absence of reliable *hadith*. A challenge that jurists had to reconcile was which of the Prophet's actions and decisions were religiously binding and which were merely a function of personal discretion of the Prophet? In general, *ahl al-hadith* eventually lent legislative significance to much of the Prophet's decisions, whereas other schools tended to distinguish between the various roles that the Prophet played in his life. Eventually, Islamic scholar Muhammed Ibn Idris al-Shafi'i (d.819) established a common methodology for the formation of Islamic laws which would rely on the *Quran*, the *sunna* (tradition of Prophet Mohammad), *Qiyas* (analogies) and *ijma* (unanimous agreement).¹⁹

The complexities that envelop Islamic jurisprudence and interpretations today, after an elapse of more than fourteen hundreds years since the advent of Islam, are contained in the varying points of views and opinions within the Islamic discourse itself. The human factor regarding the influences that could have had a profound effect on the collection of the *Ahadith* cannot be overlooked as these were not divine words or accounts, unlike the *Quran*, and therefore susceptible to individual presentation and interpretation of events and the Prophet's words. The reporting, and thus the authenticity,²⁰ of Prophet Mohammed's traditions after his death have been a source of considerable concern to Muslim scholars, particularly with regard to the formation of *Sharia* laws. Another area of concern is the limitations of the Arabic language in which the *Quran* was originally written and conceived. Despite the fact that all Muslims do not know Arabic, it is still believed to be obligatory for all Muslims to read it in the original language as the most

¹⁹For detailed discussion see Ibid. "Sources of Islamic Law". p-2.

For details on Muhammed Ibn Idris al-Shafi' and his role in the formation of Islamic laws see Viorst, Milton. In the Shadow of the Prophet. "Making the Sharia". Westview Press, USA, 2001. p-162.

²⁰ By the end of the second century of Islam, it was believed that the fabricated *ahadith* numbered in the thousands and hundreds of thousands and contained an unimaginable amount of contradiction and variety. For further details see "The Role of *Ahadith* in the First Two Centuries of Islam". p-8. Accessed at: www.mwlusa.org on May 9, 2005.

authentic version. In her discussion of *Usul Fiqh*²¹ in Islam, interfaith scholar Farzana Hassan-Shahid points out:

While no Muslim disputes the authenticity or authority of the Qur'an, there is little doubt that the Qur'anic text can lend itself to variant interpretations that may reflect cultural biases, societal norms and social attitudes. Differences in the connotative and denotative usages of the language also open the door to several interpretations and may at times result in "stripping the text of its meaningful connotations" as Najah Khadim, a British scholar of Islam suggests. It is therefore difficult to understand the Qur'an's true spirit unless one is familiar with the historical circumstances surrounding a particular injunction. The linguistic intricacies of Qur'anic Arabic must also be thoroughly understood before laws are formulated or viewpoints established.²²

Despite the ongoing debates between the various schools of Muslim religious thought and sources of jurisprudence in today's Islamic societies it is the recourse to *Ijtihad* (progressive reasoning by analogy)²³ that has been collectively ignored and suppressed by all schools since the tenth century, despite its provision within the framework of Islam.²⁴ This neglect has continued to foster religious fundamentalism through a literalist interpretation of the *Quran*, particularly regarding women's status and freedoms.

In Pakistan, General Zia-ul-Haq claimed supreme authority to 'Islamize' the country, proclaiming: "I have a mission, given by God, to bring Islamic order in Pakistan".²⁵ Hence followed the dictatorial regime's *Islamization* process that was to inculcate all areas of civil and administrative life under one umbrella, that of fundamentalist Islam. South Asia scholar and political analyst, Ishtiaq Ahmed explains:

When General Muhammad Zia ul Haq captured the reigns of power in 1977, a long tradition of relying on Islam to define national identity and the rights of citizens was already in place, although the fundamental rights of Pakistani citizens had continued to be defined in general liberal terms

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²² Hassan-Shahid, Farzana. "Shariah: Re-examination of Usul Fiqh?" The American Muslim. Accessed at: http://islamtoday.ca/sharia/2005apr_comments.htm on May 30, 2005.

²³ *Ijtihad* is a technical term of the [Islamic law](#) that describes the process of making a legal decision by independent interpretation of the sources of the law, the [Qur'an](#) and the [Sunna](#). The opposite of *ijtihad* is *taqlid*, imitation. The person who applies *ijtihad*, the *mujtahid*, must be a scholar of Islamic law. The word derives from the [Arabic](#) verbal root *jahada* "struggle", the same root as that of [jihad](#); the <t> is inserted because the word is a [derived stem VIII](#) verb. The common [etymology](#) is worth noting, as both words touch on the concepts of struggle, effort, and meditation. *Ijtihad* is a method of legal reasoning that does not rely on the traditional schools of jurisprudence, or [madhabs](#). For further discussion see "*Ijtihad*". Accessed at: <http://en.wikipedia.org/wiki/Ijtihad> on June 6, 2005.

²⁴ For detailed discussion on the closing of the doors of *Ijtihad* among Muslim jurists in the tenth century, see Dahl, Stang Tove. *The Muslim Family: A Study of Women's Rights in Islam*. "The Legal Techniques: *ijma*, *qiyas* and *ijtehad*". (Translated from the Norwegian into English by Ronald Walford) Scandinavian University Press, Norway, 1997. p-41.

²⁵ Interview given by General Zia-ul-Haq to British Broadcasting Corporation, (BBC) on April 4, 1978.

and only symbolic restrictions had been imposed on non-Muslims, disqualifying them from contesting the highest offices in the state. Zia, however, wanted to establish an Islamic state in a substantial and not merely a symbolic manner. He declared “I have a mission, given by God, to bring Islamic order to Pakistan”. He visualized a social order in which all sectors of life, including administration, judiciary, banking, trade, education, agriculture, industry and foreign affairs, were regulated in accordance with Islamic law and precepts. Thereafter, followed the Islamisation process. Women, non-Muslims and minor sects were the direct victims of such reforms. The Blasphemy Law, the Law of Evidence, Hudud punishments and several other edicts upheld by the Pakistani judicial system are in direct contravention of the human rights commitment that the Government of Pakistan has made to the international community.²⁶

Although the *Sharia* laws can be complemented by civil and family laws in some Muslim states depending on the particular nature of a Muslim country and the freedoms and provisions guaranteed by its government, judicial system and society, in Pakistan this has not been possible regarding the *Hudood* laws despite the widespread protests by women and rights groups. Ahmed explains:

It seems that once the origin or basis of a law or a rule is claimed to be Islamic, governments and political leaders dare not repeal them. The political costs of defying such a stricture are too high and most of the time governments simply do not act, or act inconsistently. Thus signing or ratifying international human rights treaties remains virtually a symbolic act and many treaties even when signed can be ignored with impunity.²⁷

Thus, given the above mentioned scenario, General Zia-ul- Haq was able to manipulate the situation and play out his dictatorial politics in the guise a fundamentalist *Wahhabi* ²⁸model of Islam, and introduced the extremist Islamic

²⁶ Ahmed, Ishtiaq. “Pakistan's Human Rights Obligations”. Daily Times, Pakistan, November 30, 2003. Constitution Making and Law Enactment in Pakistan. Accessed at: www.usenet.com on May 9, 2005.

²⁷ Ibid.

²⁸ Wahhabi theology advocates a [fundamentalist](#), puritanical and legalistic stance in matters of faith and religious practice. Wahhabists see their role as a movement to restore [Islam](#) from what they perceive to be innovations, superstitions, deviances, heresies and idolatries. During the time of Mohammed Ibn Abdul Wahhab, whose prominence gave name to this movement, there were many practices that they believed were contrary to Islam, such as:

- That invoking any prophet, saint or angel in prayer, other than God alone, is [polytheism](#)
- Grave worship, whether to saints' graves, or the prophet's grave
- Celebrating annual feasts for dead saints

Hudood Ordinances as ‘Islamic’ criminal law, which included the *Zina Hudood Ordinance* as discussed in the paper. Lawyers Asma Jehangir and Hina Jilani explain the intricacies of the *Hudood Ordinances*:

The *Hudood* laws, promulgated in 1979 and enforced in 1980, are a collection of five criminal laws, collectively known as the *Hudood Ordinances*. The *Offences Against Property Ordinance* deals with the crime of theft and armed robbery. The *Offence of Zina Ordinance* relates to the crime of rape, abduction, adultery and fornication.²⁹ The word *Zina* covers adultery as well as fornication. The *Offence of Qazf Ordinance* relates to a false accusation of *Zina*. The *Prohibition Order* prohibits use of alcohol and narcotics. The last is the *Execution of Punishment of Whipping Ordinance*, which prescribes the mode of whipping for those convicted under the *Hudood Ordinances*.

Ostensibly, the *Hudood Ordinances* were promulgated to bring the criminal justice system of Pakistan in conformity with the injunctions of Islam. Hence, the forms of punishment recognized by Muslim jurists are introduced in the *Ordinances*. Two levels of punishment and, correspondingly, two separate sets of rules of evidence are prescribed. The first level or category is the one called the *Hadd* which literally means the “limit” and the other “*Tazir*”, which means “to punish”. *Hadd* punishments are definitely fixed, leaving no room for the judge to take account of mitigating or extenuating circumstances of the crime.....For rape or *Zina* committed by adult married Muslims *Hadd* punishment is stoning to death; for adult non-Muslims and adult single Muslims it is 100 lashes.....*Tazir* is simply a fall-back position from *Hadd*. For instance, lack of evidence for *Hadd* does not exonerate the accused of the criminal liability. The accused is still liable for *Tazir*.³⁰

Given the vastness and sensitivity of the issue, it is evident that there is considerable debate within the Islamic jurisprudence and civil society itself as to the authenticity, appropriateness and application of *Quranic* injunctions, and the means by which to either authenticate them or reinterpret them according to the times and circumstances.

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- Wearing of charms, and believing in their healing power
 - Practicing magic, or going to sorcerers or witches seeking healing
 - Erecting elaborate monuments over any grave
 - Innovation in matters of religion (e.g. new methods of worship)

For further details see “Wahhabism: Origins”. Accessed at: <http://en.wikipedia.org/wiki/Wahabism> on July 6, 2005.

²⁹ *Zina*: A man and a woman are said to commit ‘*zina*’ if they willfully have sexual intercourse without being validly married to each other. Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the *Offence of Zina*. Jahangir, Asma and Jilani, Hina: “*The Hudood Ordinances*”. *The Hudood Ordinances: A Divine Sanction?* Sang-e-Meel Publications, Lahore, Pakistan, 2003.p-23.

³⁰ Jahangir, Asma and Jilani, Hina: “*The Hudood Ordinances*”. *The Hudood Ordinances: A Divine Sanction?* Sang-e-Meel Publications, Lahore, Pakistan, 2003. pp-23-24.

Politicization of Islam

The two questions that this paper will specifically try to explore is why did the need for such discriminatory laws arise in Pakistan, a country which had always been predominantly Muslim but yet had survived without '*Islamization*', and why these laws have still not been amended or repealed even after a lapse of more than two decades?

Historian and South Asia scholar, Ayesha Jalal, opines that the motive behind the introduction of the *Hudood Ordinance* by General Zia was political. She says "realizing that very few had been persuaded, the General, a wily social tactician, calculated that playing the women's card could confirm his regime's commitment to Islam and, by extension, its legitimacy".³¹

Zia used the 'women's card' as the first and most obvious symbol for his *Islamization* plans, knowing that a large majority of the male population of the country would have little difficulty in digesting its implications for a moral and puritan Islamic society. Consequently, the promulgation of the *Zina Hudood Ordinance* strengthened the Islamic legal framework of the country, but weakened the judicial system based on sectarian social principles. The *Sharia* laws are easily defended in an Islamic country, and any vocal dissent is seen as a detour from the path of piety, which can and must be met with exemplary punishment. Jalal explains further:

A devout Muslim, Zia proclaimed himself divinely ordained to steer Pakistani society back to the moral purity of Islam. Pakistan and Islam, he argued, were inextricably linked, and the preservation of both had been enjoined upon the military establishment. In case the equation between Pakistan, Islam and the military failed to register, Zia appropriated the call for a *Nizam-e-Mustafa* (a way of life based on the teachings of Prophet Mohammad) --that umbrella term dignifying an ideologically and economically fragmented opposition---and tried turning it into a personal mandate from the people.³²

The *Zina Hudood Ordinance* finds widespread support among the generally sexist male population of Pakistan because the law not only serves the purpose of terrorizing and subjugating women, but also resolves critical and controversial issues like proving rape in the court of law in men's favor. As part of its *Islamization* process, the Zia regime began to counter the comparatively lenient family laws of 1961³³, which gave at least some measure of protection and justice to the women of Pakistan, particularly regarding registration of marriage, discouraging polygamy, the right to divorce, and inheritance, with rigid gender-discriminatory laws.

³¹ Ayesha Jalal, "The Convenience of Subservience: Women and the State of Pakistan", Women, Islam and the State, ed. Deniz Kandiyoti, Macmillan Press, 1991. p-101.

³² Ibid.p.100-101

³³For details, see Mumtaz, Khawar and Shaheed, Fareeda: "Women's Rights and Organizations". Women of Pakistan: Two Steps Forward, One Step Back? Vanguard Books. Lahore, Pakistan, 1987. p-57-60.

The Zina Hudood Ordinance and the Law of Evidence

Under the present combination of the *Zina Hudood Ordinance* and the *Law of Evidence* the raped and the rapist stand in opposition—not because of the crime committed—but because these laws themselves are designed to favor the male over the female. Although the *Zina Hudood Ordinance* governs both genders, in a country of 142 million,³⁴ it carries the potential to affect negatively the more than seventy million female citizens of Pakistan. The following is a description of the *Zina Hudood Ordinance* as contained in the *Hudood Ordinance* of 1979 under the *Sharia* laws of Pakistan:

- 1) The *Hudood Ordinance* criminalizes *Zina*, which is defined as extra-marital sex, including adultery and fornication.
- 2) It also criminalizes *Zina-bil-jabr*, which is defined as rape outside of a valid marriage.
- 3) The *Hudood Ordinance* further defines *Zina* and *Zina-bil-jabr* on the basis of the assigned criminal punishment.
- 4) Hence there is *Zina* and *Zina-bil-jabr* liable to *Hadd* (punishment ordained (supposedly) by the Holy Quran or *Sunnah*:
- 5) And there is *Zina* and *Zina-bil-jabr* liable to *tazir*, that is, any punishment other than *Hadd*. The *Hadd* punishment is stoning to death, and the *tazir* punishment for *Zina* is up to ten years of imprisonment and whipping - up to thirty lashes and/or a fine. The *tazir* punishment for *Zina-bil-jabr* is up to twenty-five years of imprisonment and whipping up to thirty lashes.³⁵

The *Zina Hudood Ordinance* in particular is an issue for feminist enquiry in Pakistan as it concerns women's legal status and rights as citizens of that country. The Islamic legal framework within which this law has been protectively placed, is blatantly gender-discriminatory in nature, and has the potential to condone and legitimize male violence against women when combined with the *Law of Evidence*, which becomes mandatory for the purpose of bearing witness and testifying in court.

Considering the fact that the *Quran* is taken as the divine word of God by Muslims, and the *Zina Hudood* laws are supposedly constructed around a rigid interpretation of its text, these laws have remained untouched by successive democratic governments because their appeal lies with patriarchal men, who not only interpreted them from their very inception, but even today are in the majority as decision makers and legislators in Pakistan. The rigid interpretation of the *Quranic* text renders women as subordinate and inferior to men, and facilitates these laws as a non-debatable basis for acceptable female behavior in an Islamic society, ruled by *Sharia* Laws. The *Quran* notes:

³⁴ General Statistics on the Status of Women. *Putting Women in the Picture: A Statistical Profile of Women in Pakistan, 2002*. Prepared in collaboration with UNICEF. Published by the Ministry of Women's Development, Social Welfare and Special Education, Government of Pakistan, Islamabad, Pakistan, 2002.

³⁵ Enforcement of Hudood Ordinance, 1979 (VI of 1979), the Offence of Zina (Enforcement of Hudood Ordinance, 1979 (VII of 1979), Presidential Order- No. 4 of 1979, Ministry of Law, Justice and Human Rights, Islamabad, Government of Pakistan. Accessed at www.infopak.gov.pk on November 13, 2003.

Men are in charge of women, because Allah hath made the one of them to excel the other, and because they spend of their property (for the support of women). So good women are the obedient, guarding in secret that which Allah hath guarded. As for those [women], from whom ye fear rebellion, admonish them and banish them to beds apart; and scourge [beat] them. Then, if they obey you, seek not a way against them. Lo! Allah is ever High Exalted, Great.³⁶

Considering the nature of these laws, it becomes apparent that the *Quranic* clause "men are in charge of women, because Allah hath made the one of them to excel the other" has been interpreted under the *Sharia* as men having divinely sanctioned authority over women, and thus the power and liberty to subjugate them as a measure of piety and religiosity.

The Islamic Law of Evidence

Under the Islamic *Law of Evidence*, introduced into the Pakistani legal system in 1984 by General Zia as another measure for watertight male control, a woman who has been raped can be imprisoned or subjected to corporeal punishment if unable to provide adequate number of witnesses to the incident. The *Law of Evidence* states that the testimony of *two* women is admissible only as *one* reliable source; i.e., the testimony of a female is considered half that of a man's in a Pakistani court of law. The law requires that an equivalent of four Muslim male witnesses of good character verify a woman's claim to sexual penetration and consequent rape.³⁷ Otherwise, a rape victim is considered guilty of fornication or adultery under the *Zina Hudood Ordinance*. Explaining the complexities of the law, Shahnaz Khan points out:

The onus of providing proof of rape rests with the victim under the *Hudood Ordinance* and there are severe ramifications if she does not provide that proof. If she is unable to convince the court, her allegation of rape is in itself considered as confession of *Zina* and the victim effectively implicates herself and is liable to *Tazir* punishment. Furthermore, the woman can be categorized as the rapist herself since it is often assumed that she seduced the man.³⁸

This approach finds further acceptance and sanction in an Islamic country because pre-marital and extra-marital sex is prohibited by Islam, and deemed a sin which can carry the sentence of capital punishment through stoning to death. Based on a rigid interpretation of the *Sharia* laws, the *Zina Hudood Ordinance* also makes no distinction as to whether a sexual act has been committed willfully or forcibly by a woman, and in a way, facilitates the rape of a woman by providing gender-discriminatory protection to the male rapist, thus turning the victim into the accused. Although men can also be charged

³⁶ 4.34. *The Holy Quran*.

³⁷ For details see Mumtaz, Khawar and Shaheed, Fareeda: "Legally Reducing Women's Status". *Women of Pakistan: Two Steps Forward, One Step Back?* Vanguard Books. Lahore, Pakistan, 1987. p-106-110.

³⁸ Khan, Shahnaz. "Gender, Religion, Sexuality and the State: Mediating the *Hudood* Laws in Pakistan". Centre for Research and Violence against Women and Children, London, Ontario, Canada, 2001. Accessed at www.uwo.ca/violence on May 1, 2004. p-3.

with *Zina*, normally it has been recorded that with a simple denial they can go free because they can testify on their own behalf as opposed to women, and because they enjoy a higher status, both culturally and in terms of religion within the patriarchal framework of the country. The Pakistan Commission of Inquiry for Women Report of 1997 itself notes:

uslims of good repute who are witnesses is an unfair standard since few men of good repute would stand by and watch a rape take place. In a Pakistani court a woman's complaint of rape is considered a confession of illicit sexual intercourse; a subsequent pregnancy is also evidence against her.³⁹

Despite the rhetoric that surrounds Muslim males' claims of protecting their women by imposing rigid controls over their sexuality and conduct, the entire argument, courtesy the combination of the *Law of Evidence* and the *Zina Hudood Ordinance*, is turned around in court when a woman actually seeks justice, and stands accused till proven innocent. The chances of which are never great to begin with, and further diminish with each passing day of humiliating questioning in court, considering that the *Law of Evidence* itself places hurdles in the path of obtaining justice by rendering a woman's own testimony as worth half of a man's. Dorothy Thomas of Human Rights Watch elaborates on the pitfalls of the law:

The testimony of women, under the Law of Evidence introduced in February 1983 by the Zia-ul-Haq regime -- not only the victim but also any woman -- carries no legal weight. This requirement means that women who have been sentenced to the maximum punishments have been so sentenced under a law that prevents them from testifying on their own behalf. Men have also been sentenced under these laws, although in general men accused of rape are effectively exempted from the maximum Hudood punishments because women can neither testify independently on their behalf, nor is any person likely to be able to produce four male Muslim witnesses to the act of penetration.⁴⁰

The *Zina Hudood Ordinance* and the *Law of Evidence* empower men over women in the legal system, and their religious interpretations subdue and undermine women's rights regardless of their social, economic and age characteristics, placing them at the mercy and control of laws designed to discriminate against them rather than to ensure justice. Nasir Aslam Zahid, a former Supreme Court Judge and chair of the National Commission on the Status of Women (NCSW), who recommended a repeal of the *Hudood* laws in its 1997 report, notes that prior to the introduction of the *Hudood Ordinance*, adultery was not a criminal offence, but a personal matter: "only directly affected persons - a wife or husband - could register cases, but only against men as a

³⁹ The Commission of Inquiry for Women Report of 1997. Ministry of Women development, Social Welfare, and Special education, Islamabad, Pakistan, 1997.

⁴⁰ Dorothy Q. Thomas, *Global Report on Women's Human Rights: Human Rights Watch Report on Pakistan*, USA, 1992. Accessed at www.hrw.org/pakistan on February 20, 2004.

protection for women in a male-dominated, feudal society where women are rarely in control of their lives."⁴¹ South Asian scholar and linguist, Tariq Rehman, notes:

What happened under Zia-ul-Haq was that if a woman delivered it was considered proof enough, and she could be given the maximum punishment for adultery. This could mean, in a Kafkaesque reversal, that raped women could be punished, while rapists went scot-free. Moreover, as the evidence of women was not admissible, a rapist could rape a girl in a girl's hostel and still not get the maximum punishment, while the girl stood guilty.⁴²

Another contradiction and violation of human and gender rights that arises here is that the 1973 Constitution of Pakistan, and the *Sharia* Act of Pakistan passed later, did not place religious minorities under the ambit of such Islamic laws, whereas under the *Hudood* laws these minorities are not exempted on religious basis.⁴³ Even the fact that Pakistan has the distinction of being the only Muslim country to have been twice governed by an elected woman prime minister, Benazir Bhutto, who took power after Zia's death in a plane crash in 1988, she did nothing to actually change the situation in favor of women and religious minority groups. The following case study exemplifies the loopholes and the gender-discriminatory essence inherent in the Islamic *Law of Evidence*:

The *Safia Bibi* Case Study

A sixteen-year-old blind girl, Safia Bibi, was raped by her landlord and his son in Sahiwal, eighty kilometers away from the Punjab capital of Lahore in 1983. A case was registered against the culprits in July 1983, and the court asked the blind girl to identify the rapists. As she failed to identify them, Bibi's consequent pregnancy was treated as evidence of fornication (as if pregnancy can only result from consensual sex), and therefore she was sentenced to three years in prison, fifteen lashes, and a fine of 1,000 rupees. The judge said the sentence was light because she was young and disabled.⁴⁴

The above case study illustrates the pitfalls for a woman seeking justice in a rape case, and exposes the oppressive gender-discriminatory alliance forged between the *Zina Hudood Ordinance* and the *Law of Evidence* in the guise of religion.

⁴¹ "Pakistan — Focus on Renewed Debate over Faith-based Laws". Accessed at www.irinnews.org/report.asp?ReportID=37481&SelectRegion=Central_Asia&SelectCountry=PAKISTAN on July 16, 2004.

⁴² Rehman, Tariq: "The Real Ideology of the Pakistani Male", The News, Lahore, Pakistan. July 23, 2004. Accessed at: www.jang.com.pk/thenews/index/html on July 23, 2004.

⁴³ Shakir, Naeem. "Women and Religious Minorities under the Hudood Laws in Pakistan". Asian Legal Resource Centre, July 2, 2004. Accessed at: www.article2.org/index.php July 13, 2004.

⁴⁴ For details see Mumtaz, Khawar and Shaheed, Fareeda: *Women of Pakistan: Two Steps Forward, One Step Back?* Vanguard Books, Lahore, Pakistan, 1987. p-103.

Legal Injustices

The Human Development in South Asia 2000 report notes that before the promulgation of the *Zina Hudood Ordinance*, when only men could be punished for adultery, there were only two reported cases. But after the promulgation of the law, it became a tool for subjugating women, and now more than half of the women in Pakistani jails awaiting trial have been falsely accused under the *Zina Hudood Ordinance*.⁴⁵ The report elaborates further:

Apart from the fact that the law is used to penalize rape victims as those who have indulged in extra marital sex, it has also been used by men to control and punish women in their own families, giving them a tool to enforce their own notions of women's conduct and to punish any deviations. Thus, a large proportion of women in jail on *zina* charges have been put there by their own fathers, brothers and husbands. These include girls who refuse to marry according to parental wishes, wives who wish to separate or terminate their marriages, women who leave their homes because of abuse, and women who refuse to go into prostitution.⁴⁶

Human rights groups in Pakistan report that a rape occurs approximately every two hours in Pakistan, half of all rape victims are juveniles, and seventy-two per cent of all women in police custody are physically and sexually abused by the jail staff and police. Most of those women are in prison on charges of violating the *Zina* laws.⁴⁷ After the 1979 introduction of the *Zina Hudood Ordinance*, cases of reported fornication or adultery jumped from a handful to thousands. In 1980, seventy women were in prison in the Punjab province alone: by 1988 the figures jumped to 6,000. A very large number of women have been tortured, molested and raped by the police with impunity. "From 1980 to 1987 the Federal Shariat Court alone heard 3399 appeals of *Zina* involving female prisoners. This is only the tip of the iceberg, given the number of women arrested and released before reaching the appeal stage".⁴⁸ Since the end of Zia-ul-Haq's era in 1988, the number of *Zina* cases has dropped. The Human Rights Commission of Pakistan (HRCP) estimates that in 2002 there were 2,200 women prisoners in Pakistan, most of who are awaiting trial or were convicted under the *Hudood* laws.⁴⁹

The emphasis placed by Islam on modesty, piety and chastity,⁵⁰ particularly for women, be it regarding something as routine as the dress code, social behavior, etc, leads to severe reluctance to even report something as urgently criminal and sexually identifying as rape, regardless of which social strata it occurs in, and is most intimidating

⁴⁵"From Victim to the Accused-The Zina Ordinance in Pakistan": Human Development in South Asia 2000: The Gender Question. Report prepared by the Mahbub-ul-Haq Human Development Centre, Islamabad, Pakistan. Oxford University Press, Karachi, Pakistan, 2000. p-99.

⁴⁶ Ibid. p-99.

⁴⁷ For details see Human Rights Commission of Pakistan Annual Report, 1999. Published by the Human Right's Commission of Pakistan, Lahore, Pakistan, 1999.

⁴⁸ Jehangir, Asma, "Women's Commission and Hudood Ordinances".

www.peacewomen.org/news/Pakistan/newsarchive03/Zina.html accessed on July 22, 2004.

⁴⁹ southasia.oneworld.net/article/view/68164/1/4591 Accessed on July 20, 2004.

⁵⁰ For detailed commentary on Islamic codes of religious, moral, and social and personal conduct, see Thanwi, Maulana Ashraf Ali. *Bahishti Zewar* (Heavenly Ornaments) Translated in to English from Urdu by M. Masroor Khan Saroha. Saeed International Publishers, New Delhi, India, 1992.

for the most marginalized sections of the society. The HRCP noted in its 1997 Annual Report that "women who belong to especially vulnerable groups are particularly likely to be targeted for abuses, including rape, and find it very difficult to obtain redress. Such women include members of the religious minorities, very poor women and women bonded laborers."⁵¹

Even educated female victims, and those who can afford the legal process, are daunted by the severity of the *Zina Haddood* laws, and they and their families deem it as the lesser evil to suffer in silence and let the matter rest as a private mishap. An equally strong reason for such reluctance is the desire to avoid the stigmas attached to rape⁵² and the social implications for a woman in an Islamic society even if justice were to be meted out. A public admittance of rape carries the potential to permanently socially ostracize a woman and her entire family as guilty of loose morals in a Muslim society where the worst can be assumed about a woman's character when rape is involved.⁵³

Furthermore, the laws in Pakistan do not include any separate provisions for marital rape because Islam does not recognize a woman's unwillingness to have sex with her husband. On the contrary, Islam makes it obligatory for a woman to be subservient to his sexual desires. Therefore, cases of marital rape are almost never reported, and when a case of this nature is reported and tried, it is done so under the umbrella of the *Zina Hudood Ordinance* as the following case study illustrates.

The Zainab Noor Case Study

In Pakistan, a shocking case of marital rape and abuse was unearthed in February, 1994, in which the *Imam* (priest) of a local mosque, Qari Muhammad Sharif, in a village near Attock in the Punjab province, committed the worst kind of marital rape and later tortured his wife, Zainab Noor. The victim narrated the incident in her own words:

I was beaten and dragged in the house for hours till late in the evening. Then he (Qari) took me to bed, tied my hands and legs with a rope, inserted two iron rods in my vagina and anus, attached two electric wires with each of the two iron rods and connected them with the switchboard. There was no electricity due to load shedding. The moment electricity was restored, he switched it on and played havoc with my body.⁵⁴

However, in the aftermath of the incident and the consequent trial and verdict, this is what had happened:

Amazingly, Zainab survived, but only to lead a miserable and abnormal life. According to the medical evidence authenticated by a Speedy Trial

⁵¹ Human Rights Commission of Pakistan Annual Report, 1997. Published by the Human Rights Commission of Pakistan. Lahore, Pakistan, 1997.

⁵² "Women and the Law": *Human Development in South Asia 2000: The Gender Question*. Report prepared by the Mahbub-ul-Haq Human Development Centre, Islamabad, Pakistan. Oxford University Press, Karachi, Pakistan, 2000. p-94

⁵³ Ibid "From Victim to Accused-the *Zina Ordinance* in Pakistan". p-99.

⁵⁴ Munir, Shafqat: "Marital Rape: Violence Sanctified under Contractual Legitimacy". Daily *The News International*, Lahore, Pakistan. 15 April 2000.

Court in Rawalpindi, the victim had lost at least three of her body organs--vagina, anus and urinary bladder. Zainab was sent to London, UK, for reconstructive surgery on the directives of Prime Minister, Benazir Bhutto.⁵⁵

Although Zainab Noors' husband was sentenced because of the hue and cry raised by the media and human rights organizations in Pakistan and abroad, he found favor with the gender-discriminatory justice system in Pakistan:

On February 19, 1994 the Speedy Trial Court sentenced Qari Sharif to 30 years of rigorous imprisonment—10 years' punishment on each count. The sentence was to run consecutively, meaning that the convict would have to remain in jail for 30 years. However, the Lahore High Court, on the appeal of Qari Sharif, reduced the sentence and ordered that his imprisonment would run concurrently, thus reducing the period of 30 years to 10 years. Qari Sharif, however, came out after spending only six years in jail, as he was given remissions in the sentence by the jail authorities, in violation of court orders, which denied him any benefit under Section 382 of CrPC.

Under this section of the Pakistan criminal procedure code, the prisoners are given remissions as provided in the jail manuals and general amnesty is given by the executive functionaries from time to time.⁵⁶

Pakistani Feminists Resist the Zina Hudood Ordinance

Following the implementation of gender discriminatory laws in the country, Pakistani feminists began to evolve strategies to build resistance and create awareness regarding women's plight. These include education and media awareness campaigns, international networking, writing and publishing, and participating in international women's conferences to present papers on the condition of women in Pakistan. The beginning of the 1980s saw an unprecedented mass mobilization of women in Pakistan to challenge gender-discriminatory laws. In 1982, the urban based women's groups, mostly from middle and upper class, formed the *Women's Action Forum* (WAF) to provide a significant platform to women, and launched a systematic countrywide struggle through advocacy programs, research, writing, pickets, lobbying, street agitation, and press campaigns. Meanwhile, women of the Sindh province formed the first rural based women's organization, the *Sindhiani Tehrik* (The Sindhi Women's Movement) to mass mobilize women to seek protection of their rights.⁵⁷ In 1983, when the Zia regime proposed a new legislation, the *Law of Evidence*, women organized a protest rally in Lahore to march to the High Court to present a memorandum to the Chief Justice of Punjab High Court, denouncing the proposed law. Over 300 women assembled on the Mall Road to march towards the High Court. The peaceful rally turned violent when over 500 policemen stopped the rally and baton charged and tear gassed the women.⁵⁸ The

⁵⁵ Daily The News International, Lahore, Pakistan. February, 31, 1994.

⁵⁶ Munir, Shafqat: "Marital Rape: Violence Sanctified under Contractual Legitimacy". Daily *The News International*, Lahore, Pakistan. 15 April 2000.

⁵⁷ For details see Mumtaz Khawar and Mitha, Yameema. *Pakistan, An Oxfam Country Profile*. Published by Oxfam, UK, 2003. p -46.

⁵⁸ Ibid. p-47.

protesters braved the street fight with the police, and despite being beaten, dragged on the road, torn clothes and the arrest of over 50 women, several women managed to reach the High Court where progressive male lawyers presented them with garlands⁵⁹ to acknowledge their militancy and strong resolve. In time, various other systematic campaigns, letter writing to politicians for lobbying, and street agitation's forced the country's political parties and trade unions to consider women as a political force, and to include women's rights and issues on their agenda.⁶⁰

Pakistani women's resistance to the *Zina Hudoob Laws and the Law of Evidence* has never faltered, so much so, that February 12, 1984, when the *Law of Evidence* was implemented, has become the symbol of women's feminist resistance movement and is commemorated countrywide each year as Pakistan Women's Day in the memory of the peaceful women's demonstration that was attacked by the police.⁶¹

A vast number of urban women from Pakistan started to go to the West for higher education to study women's issues and gender development. They returned to Pakistan with the aim of generating an activism-oriented women's movement for emancipation and equal rights, as a result of which numerous Non Government Organizations (NGOs) began to emerge to fill the need. The *Shirkat Gah*⁶² (Participation Forum), The *Aurat*⁶³ (Woman) Foundation and ASR (Impact) emerged as major multidisciplinary resource centers that fostered activism and research on women's issues. Women from these organizations regularly attend international women's conferences to present papers, and to network with other feminist organizations in order to create international awareness regarding women's problems in Pakistan based on gender discrimination.

ASR, defines itself as a socialist-feminist organization, and is involved in research, training, conducting academic courses, community work, documentary film production and assisting theatre and art groups on projects that deal with gender discrimination against women in all spheres. ASR also has the distinction of launching the first feminist press in Pakistan, holding the first National Women's Studies Conference, among others, and creating an educational and training Institute of Women's Studies in Lahore, with a focus on "cultivating and disseminating a type of Women's Studies that addresses the specific realities of Asian women's experiences and contributions".⁶⁴

The Pakistan Women Lawyers Association⁶⁵, (PAWLA), was founded in 1981 as an NGO to keep the pressure on successive governments to repeal and amend gender-discriminatory laws against women. With regional offices in all the major cities of the country, its members have been a strong voice in mobilizing street protests and rallies for equal rights and the repeal of the *Hudoob* laws. Its main objectives are to create legal awareness programs and activities, which it has been doing by showing video films in

⁵⁹ Ibid

⁶⁰ Ibid.

⁶¹ For details see "Pakistan Women's Day". Women's Action Forum Press Release, (WAF), Islamabad, Pakistan. February 12, 2004. Daily *The News International*. Accessed at: www.jang.com.pk/the/news/index.html on February 12, 2004.

⁶² *Shirkat Gah* was established in 1975. For details visit: www.jagritifoundation.org/organizations.asp?Country=Pakistan. Accessed on July 15, 2004.

⁶³ The *Aurat* Foundation. For details visit www.brain.net.pk/~apisf/main.html. Accessed on July 11, 2004.

⁶⁴ *ASR Resource Center Handbook*, Published by ASR Publications, Lahore, Pakistan, 2003.

⁶⁵ Pakistan Women Lawyer's Association. For details visit www.pawla.sdnpk.org/introduction.htm Accessed on July 13, 2004.

schools, clinics, parks and out of reach areas on key laws and women's rights. As part of its awareness campaign, PAWLA also presents plays on legal issues, followed by question and answer sessions, on Radio Pakistan.

The AGHS Legal Aid Cell for Women, established in Lahore in 1980, has since been offering shelter and free legal aid to rape victims and battered and abused women. Today, the organization has grown to include research and awareness programs and publications to educate women from all strata of the society regarding their legal rights.⁶⁶

The Human Rights Commission of Pakistan, (HRCP), established in 1986, serves as a watchdog organization that, besides espousing a host of other rights issues, actively works for women's rights and documents violations and discrimination against them in its annual reports and other publications.⁶⁷ It employs women at senior positions, while training others at junior levels for awareness campaigns and research for their reports.

According to the Ministry of Women's Development 2002 statistics, there are 13,013 NGO's operating in Pakistan registered under the Voluntary Social Welfare Agencies Ordinance, 1961.⁶⁸ Many of these organizations, with chapters in all the major cities of Pakistan, are run mainly by a female staff, and, over the years, have also evolved into research and resource centers for feminist scholars. The mushroom growth of NGOs introduced a new wave of feminist activism and pedagogical experiments as part of women's resistance. The majority of these organizations are staffed mostly by women, are free of any political affiliation, and largely depend upon international donor agencies for funding. They are working on women's issues such as violence, education, development, discriminatory laws and customs, healthcare, and spreading family planning awareness and choices for women,⁶⁹ and regularly organize seminars and workshops to highlight women's rights issues in Pakistan, while conducting awareness programs in rural areas through their research teams.

In the last decade, Pakistani feminist academics, writers and organizations have also made use of the Internet to establish international links and post articles about the gender discriminatory laws in Pakistan. Several women's organizations also use the web⁷⁰ as a means to network internationally with other women's organizations and movements, and thus build coalitions.

The last decade has also seen the emergence of Women's Studies departments and programs in all the major universities of the country, most of which are state institutions. Today many women's NGO's, because of their active presence on the national scene and strong voice through international agencies such as the United Nation, etc, are consulted at the government level in terms of policy making, legislation issues, and implementation strategies.

⁶⁶ AGHS Legal Aid Cell for Women. For details visit www.fnst.de/webcom/show_article.php/c-1056/nr-1/lkm-1673/i.html. Accessed on May 9, 2004.

⁶⁷ Human Rights Commission of Pakistan. For more details visit: www.hrcp.cjb.net/ Accessed on May 5, 2004.

⁶⁸ Women Working for Women. *Pakistan NGO's Directory, 2002*. Published by the Ministry of Women Development, Social Welfare and Special Education, Islamabad, Pakistan, 2002.

⁶⁹ Zia, Shahla and Bari, Farzana: Women in Non-Government Organizations. *Baseline Report on Women's Participation in Political and Public Life in Pakistan*. Project of International Women's Rights Action Watch-Asia Pacific. Published by Aurat Publications and Information Service Foundation, Islamabad, Pakistan, 1999. P- 81-82.

⁷⁰ ASR. For details visit www.spinifexpress.com.au/fasiapub/pakistan/pakistan.htm. Accessed on May 15, 2004. Other web sites are listed as discussed in the paper.

The establishment of an organized feminist resistance in Pakistan is impressive, given the odds that women have to contend with, and is testimony that Pakistani women have proved their resilience in the face of oppression and discrimination to keep the feminist movement vibrant and alive.

Conclusion

The encouraging factor remains the women of Pakistan themselves, whose resistance and struggle against gender-discriminatory state laws continues, and has kept the pressure on successive governments, and the debate alive at all levels.

Till the introduction of the *Zina Hudood Ordinances* in 1979, the women's organizations that existed in Pakistan were mainly involved with social and welfare work for women, children and the poor. But in the wake of countrywide protests by women's organizations against the *Zina Hudood Ordinance* and the *Law of Evidence*, the government of Pakistan was forced to set up several commissions and enquiry committees to review women's issues and submit recommendations for changes in discriminatory laws and other welfare sectors. These commissions, supervised and run mainly by women government servants, are placed under the Ministry of Women Development, Social Welfare and Special Education, which was ironically founded in 1979, the same year that the *Hudood* laws were introduced, and President General Zia-ul-Haq held the ministry portfolio from January 1979 to March 1985. It is also interesting to note that of the 15 ministers that have headed this ministry since its inception, only nine have been women, while of the eighteen federal secretaries so far only seven have been women, while it is mainly men who are in other senior positions as well within the ministry.⁷¹

The latest addition to the ministry is the National Commission on the Status of Women (NCSW) that was set up in July 2000.⁷² Following the growing pressure from the international community and from the Pakistani women's rights organizations and feminists, the current military dictator, General Pervez Musharraf, was forced to establish the National Commission on the Status of Women to review the *Zina Hudood* laws and recommend amendments. The twenty-member commission is headed by a retired High Court Judge, Majida Rizvi, the first woman judge to have been appointed to a High Court in Pakistan. The commission recommended that the *Zina Hudood* laws are flawed and need to be revised in order to make them non-discriminatory. Currently, the recommendations are under review by the government and legal experts.⁷³ In an interview with the Network of "Women Living Under Islamic Laws", Majida Rizvi said that only two members out of twenty, the representatives of religious parties and the Council for Islamic Ideology, asked for reform, while eighteen recommended a complete repeal of the *Hudood* laws. She said the two members who opposed the repeal admitted flaws in the laws, "but according to us, there are so many defects that this will not serve

⁷¹ Ministry of Women Development and Social Welfare and Special Education Handbook, 2002. Published by the Government of Pakistan, Islamabad, Pakistan, 2002.

⁷² National Commission on the Status of Women. For details visit www.ncsw.gov.pk. Accessed on May 25, 2004.

⁷³ For details visit National Commission for the Status of Women annual Report at www.ncsw.gov.pk/annual report 2/ annual report.pdf. Accessed on July 26, 2004.

the purpose. It will have to be repealed if the government really wants to do something."⁷⁴

The recommendations of the NCSW encountered severe opposition from the religious parties in the parliament, who declared the *Hudood* laws as based on the *Quranic* text, and thereby divine sanction. Member of Parliament and daughter of the *Jamaat-e-Islami* (a main religious party) chief, Samia Raheel Qazi, who is also vice-president of the *Jamaat-e-Islami's* women's commission, said "these laws are given in the *Quran*, and *Allah* does not give humans the right to change them".⁷⁵

However, Pakistan People's Party parliamentarian, Sherry Rehman, who is leading an active campaign in the parliament for the repeal of these laws said "these laws are not delivering justice, but rather are facilitating "miscarriage of justice" and therefore repeal is the only way to deal with them. They are such flawed laws and so poorly executed and drafted, that you are left with very little if mere amendment occurs."⁷⁶

Things are looking up for women following the last general elections in October 2002, which resulted in improved conditions for women in politics. Their representation as legislators in the provincial and national assemblies and the senate has increased considerably after the revival of reserved seats with an enhanced percentage. Women's representation in the local government has increased by 33 per cent. In the original 1973 constitution of Pakistan twenty reserved seats were allocated to women in the National Assembly but the 1997 general elections were held without this provision. However, in the October 2002 elections the government increased the seats of the National Assembly from 217 to 350 of which 60 seats were reserved for women. With 60 and 128 reserved seats in the National and Provincial assemblies respectively, and the allocation of 17 seats in the Senate,⁷⁷ women's position in the political arena has strengthened considerably. With the backing of a sizable women's representation in the assemblies and the Senate, it

can be anticipated that enough pressure will be created to put an end to all gender discriminatory laws, besides creating the space to fight for women's due representation in all other walks of life.

In light of the increased women's representation in the government, besides the women's resistance movement against oppressive laws it can be hoped now that the atmosphere of struggle and resistance will be strengthened in a manner that will reap long awaited and lasting results. If left unchecked, these laws will only be strengthened with the passage of time as they are repeatedly employed as a weapon for women's subjugation. Pakistan's recent alliance with the West in the war against terrorism would be more meaningful and complete if it were to introspect and eliminate its self-created war of terror against half of its own population--women.

References

⁷⁴Women Living under Muslim Laws. Accessed at www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-27268%20&cmd%5B189%5D=x-189-27268 on July 26, 2004.

⁷⁵ "Laws Victimizing Pakistani Women Seen as 'Divine' by Hardline Supporters". The Daily Times, May 3, 2004. www.dailytimes.com.pk/default.asp?page=story_3-5-2004_pg7_24 Accessed on May 3, 2004.

⁷⁶ Ibid.

⁷⁷ Government of Pakistan official web site, Islamabad, Pakistan. Accessed at www.infopak.gov.pk on May 15, 2004.

- ASR Resource Center Handbook, Published by ASR Publications, Lahore, Pakistan, 2003.
- Barlas, Asma. "Texts and Textualities: The *Qur'an*, *Tafsir*, and *Ahadith*". "Believing Women" in Islam: Unreading Patriarchal Interpretations of the Qur'an. University of Texas Press, Austin, USA, 2002.
- Dahl, Stang Tove. The Muslim Family: A Study of Women's Rights in Islam. "The Legal Techniques: *ijma*, *qiyas* and *ijtehad*". (Translated from the Norwegian into English by Ronald Walford) Scandinavian University Press, Norway, 1997.
- Jahangir, Asma and Jilani, Hina: The Hudood Ordinances: A Divine Sanction? Sang-e-Meel Publications, Lahore, Pakistan, 2003.
- Jalal, Ayesha: "The Convenience of Subsistence: Women and the State of Pakistan", Women, Islam and the State. ed. Deniz Kandiyoti, Macmillan Press, 1991.
- Mawdudi, Abul A'la. "Faith and Divine Law". Towards Understanding Islam. Al Attique Publishers Inc. Canada, 1993.
- Mawdudi, Abul A'la. The Islamic Law and Constitution. Islamic Publications Ltd. Lahore, Pakistan, 1980.
- Ministry of Women Development and Social Welfare and Special Education Handbook, 2002. Published by the Government of Pakistan, Islamabad, Pakistan, 2002.
- Mumtaz, Khawar and Shaheed, Fareeda: Women of Pakistan: Two Steps Forward, One Step Back? Vanguard Books. Lahore, Pakistan, 1987.
- Thanwi, Maulana Ashraf Ali: Bahishti Zewar (Heavenly Ornaments) Translated into English from Urdu by M. Masroor Khan Saroha. Saeed International Publishers, New Delhi, India, 1992.
- The Holy Quran.
- Viorst, Milton. "Making the Sharia". In the Shadow of the Prophet. Westview Press, USA, 2001.
- Women Working for Women Pakistan NGO's Directory, 2002. Published by the Ministry of Women Development, Social Welfare and Special Education, Islamabad, Pakistan, 2002.
- Zafar, Fareeha: "A Feminist Activist in Pakistan". Women's Studies, Women's Lives: Theory and Practice in Asia. Kali for Women Publications, New Delhi, 1994.

Newspapers

- Cowasjee, Ardeshir. : "Injustice to Women". February 5, 2004. The *Dawn*, Karachi, Pakistan. Accessed at: www.dawn.com on February 5, 2004.
- The *Zainab Noor Case Study*. Daily The *News International*, Lahore, Pakistan. February 31, 1994.
- "Laws Victimized Pakistani Women Seen as 'Divine' by Hardline Supporters". The *Daily Times*, May 3, 2004. Accessed at: www.dailytimes.com.pk/default.asp?page=story_3-5-2004_pg7_24 on May 3, 2004.
- Munir, Shafqat: "Marital Rape: Violence Sanctified under Contractual Legitimacy". The *News International*, Lahore, Pakistan. 15 April 2000.
- Rehman, Tariq: "The Real Ideology of the Pakistani Male", The *News International*, Lahore, Pakistan. July 23, 2004. Accessed at: www.jang.com.pk/thenews/index/html on July 23, 2004.

Women's Action Forum Press Release, (WAF), " Pakistan Women's Day". Islamabad, Pakistan. February 12, 2004. *The News International*. Accessed at: www.jang.com.pk/the/news/index.html on February 12, 2004.

Reports

"Crime or Custom? Violence against Women in Pakistan". Human Rights Watch World Report on Pakistan, 1999. Accessed at: www.hrw.org/reports/1999/pakistan/ on May 12, 2004.

Dorothy Q. Thomas, Global Report on Women's Human Rights: Human Rights Watch Report on Pakistan, USA, 1992. Accessed at: www.hrw.org/pakistan on February 20, 2004.

Human Development in South Asia 2000: The Gender Question. Report prepared by the Mahbub-ul-Haq Human Development Centre, Islamabad, Pakistan. Oxford University Press, Karachi, Pakistan, 2000.

Human Rights Commission of Pakistan Annual Report, 1997. Published by the Human Rights Commission of Pakistan. Lahore, Pakistan, 1997.

Human Rights Commission of Pakistan Annual Report, 1999. Published by the Human Rights Commission of Pakistan, Lahore, Pakistan, 1999.

Mumtaz, Khawar and Mitha, Yameema. Pakistan, An Oxfam Country Profile. Published by Oxfam, UK, 2003.

National Commission for the Status of Women Annual Report. Accessed at: www.ncsw.gov.pk/annual report 2/ annual report.pdf. on July 26, 2004.

The Enforcement of Hudood Ordinance, 1979 (VI of 1979), the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), Presidential Order- No. 4 of 1979, Ministry of Law, Justice and Human Rights, Islamabad, Government of Pakistan. Accessed at: www.infopak.gov.pk on November 13, 2003.

The Commission of Inquiry for Women Report, 1997. Published by the Ministry of Women Development, Social Welfare and Special Education, Islamabad, Pakistan, 1997.

Zia, Shahla and Bari, Farzana: "Women in Non-Government Organizations", Baseline Report on Women's Participation in Political and Public Life in Pakistan. Project of International Women's Rights Action Watch-Asia Pacific. Published by Aurat Publications and Information Service Foundation, Islamabad, Pakistan, 1999.

Websites

"Pakistan — Focus on Renewed Debate over Faith-based Laws". Accessed at: www.irinnews.org/report.asp?ReportID=37481&SelectRegion=Central Asia&SelectCountry=PAKISTAN on July 16, 2004.

AGHS Legal Aid Cell. Accessed at: www.fnst.de/webcom/show_article.php/_c-1056/_nr-1/_lkm-1673/i.html on May 9, 2004.

ASR. Accessed at: www.spinifexpress.com.au/fasiapub/pakistan/asr.htm#top on May 15, 2004.

Government of Pakistan official web site, Islamabad, Pakistan. Accessed at: www.infopak.gov.pk on May 15, 2004.

Human Rights Commission of Pakistan. Accessed at: southasia.oneworld.net/article/view/68164/1/4591 on July 20, 2004.

Human Rights Commission of Pakistan. Accessed at: www.hrcp.cjb.net on May 5, 2004.

Jehangir, Asma, "Women's Commission and Hudood Ordinances". Accessed at: www.peacewomen.org/news/Pakistan/newsarchive03/Zina.html on July 22, 2004.

Khan, Shahnaz. "Gender, Religion, Sexuality and the State: Mediating the *Hudood* Laws in Pakistan". Centre for Research and Violence against Women and Children, London, Ontario, Canada, 2001. Accessed at: www.uwo.ca/violence on May 1, 2004.

Ministry of Law, Justice and Human Rights, Islamabad, Government of Pakistan: Accessed at: www.infopak.gov.pk on April 9, 2004.

National Commission for the Status of Women, Pakistan. Accessed at: www.ncsw.gov.pk on May 25, 2004.

Pakistan Women Lawyers Association, (PAWLA) Accessed at: www.pawla.sdnpk.org/introduction.htm on July 13, 2004.

Shakir, Naeem. "Women and Religious Minorities under the Hudood Laws in Pakistan". Asian Legal Resource Centre, July 2, 2004. Accessed at: www.article2.org/index.php on July 13, 2004.

The Aurat Foundation. Accessed at: www.brain.net.pk/~apisf/main.html on July 11, 2004.

The *Shirkat Gah*. Accessed at: www.jagritifoundation.org/organizations.asp?Country=Pakistan on July 15, 2004.

Women Living under Muslim Laws. Accessed at: www.wluml.org/english/newsfulltxt.shtml?cmd%5B157%5D=x-157-27268%20&cmd%5B189%5D=x-189-27268 on July 26, 2004.

Women Publishing in Asia. Accessed at: www.spinifexpress.com.au/fasiapub/pakistan/pakistan.htm on June 3, 2003.

British Broadcasting Corporation, (BBC) Accessed at: <http://news.bbc.co.uk/>

"Wahhabism: Origins". Accessed at: <http://en.wikipedia.org/wiki/Wahabism> on July 6, 2005.

Ahmed, Ishtiaq. "Pakistan's Human Rights Obligations: Constitution Making and Law Enactment in Pakistan". The Daily Times, Lahore, Pakistan, November 30, 2003. Accessed at: www.usenet.com on May 9, 2005.

"Ijtihad". Accessed at: <http://en.wikipedia.org/wiki/Ijtihad> on June 6, 2005.

Gibb, H.A.R. "The Shari'a". Accessed at: <http://answering-islam.org.uk/Books/Gibb/sharia.htm> on April 9, 2005.

"The Role of Ahadith in the First Two Centuries of Islam". Accessed at: www.mwlusa.org on May 9, 2005.

Hassan-Shahid, Farzana. "Shariah: Re-examination of Usul Fiqh?" The American Muslim. Accessed at: http://islamtoday.ca/sharia/2005apr_comments.htm on May 30, 2005.

"Intellectual Background: Islamic Sources of Information and the Development into Islamic Law". Accessed at: www.mwlusa.org on June 6, 2005.